

**IC 34-35**

**ARTICLE 35. CHANGE OF VENUE**

**IC 34-35-1**

Chapter 1. Change of Venue Generally

**IC 34-35-1-1**

**Application; causes**

Sec. 1. The court or the judge shall change the venue of any civil action upon the application of either party, made upon affidavit showing one (1) or more of the following causes:

- (1) The judge has been engaged as counsel in the cause before the judge's election or appointment as judge or is otherwise interested in the cause.
- (2) The judge is of kin to either party.
- (3) The opposite party has an undue influence over the citizens of the county, or an odium attaches to the applicant or to the applicant's cause of action or defense, on account of local prejudice.
- (4) The county is a party to the suit.
- (5) Showing to the satisfaction of the court that the convenience of witnesses and the ends of justice would be promoted by the change.
- (6) The judge of the court in which the action is pending is a material witness for the party applying for the change.
- (7) Either party makes and files an affidavit of the bias, prejudice, or interest of the judge before whom the cause is pending.

*As added by P.L.1-1998, SEC.31.*

**IC 34-35-1-2**

**Designation of county; trial; costs**

Sec. 2. (a) This section applies when a change of venue is directed for any of the causes mentioned in section 1(3), 1(4) and 1(5) of this chapter.

(b) The court or judge shall:

- (1) designate the county to which the venue shall be changed, which may be in the same or in an adjoining circuit, as is considered best for the furtherance of justice; and
- (2) prescribe the time within which the applicant shall pay the costs of the change.

(c) The clerk of the court in which the suit is pending, as soon as the costs of the change are paid, shall immediately transmit:

- (1) all the papers; and
- (2) a transcript of all the proceedings;

to the clerk of the court of the county to which the venue is changed.

(d) The clerk of the proper court shall:

- (1) receive the papers and transcript;
- (2) give a receipt for items received under subdivision (1); and
- (3) docket the action in its order among the other causes of the

court.

(e) The action shall stand for trial and shall be tried or otherwise disposed of in the same manner as if the cause had originated in that court.

(f) If the party fails to pay the costs of the change within the time prescribed by the court, the party:

(1) shall be taxed with all the costs made in the case up to the time of the failure to pay costs; and

(2) is not entitled to a change of venue from the county.

(g) Only one (1) change of venue shall be granted to the same party from the county, and only one (1) from the judge.

*As added by P.L.1-1998, SEC.31.*

### **IC 34-35-1-3**

#### **Presiding judge; attorney appointed as judge**

Sec. 3. (a) This section applies when the change of venue is granted for any of the causes mentioned in section 1(1), 1(2), 1(6), or 1(7) of this chapter.

(b) Except as provided in subsection (c), the court or judge shall call a judge of any circuit, superior, or other court of general jurisdiction, or any justice of the supreme court, to preside in and try the case.

(c) If it is difficult, in the opinion of the court, for any cause, to procure the attendance of a judge described in subsection (b), the court, in order to prevent delay, may appoint any competent and disinterested attorney of Indiana, in good standing, to act as judge in the cause. If the attorney appointed under this subsection consents to serve:

(1) the attorney shall be qualified as other judges;

(2) the attorney's appointment and oath shall be filed with the clerk and entered on the order book; and

(3) the attorney has authority to:

(A) hear and determine the cause until it is finally disposed of; or

(B) change the venue of the cause in proper cases.

*As added by P.L.1-1998, SEC.31.*

### **IC 34-35-1-4**

#### **Compensation for judge pro tempore and special judges**

Sec. 4. (a) When a practicing attorney is called upon to preside in the place of the regular judge as a judge pro tempore, the attorney shall be allowed the following:

(1) The sum of twenty dollars (\$20) per day for each day or part of a day actually served.

(2) For each mile necessarily traveled each day in going to and returning from the place where the court is being held, a sum for mileage equal to that sum per mile paid to state officers and employees. The rate per mile shall change each time the state government changes its rate per mile.

(b) If such judge pro tempore is a resident of another county, the

judge pro tempore shall be paid an additional sum of twenty dollars (\$20) for each day or part of a day actually served, making a total of forty dollars (\$40).

(c) The judge pro tempore shall be paid on the presentation of:

- (1) an order made by the court for the allowance, specifying the days of service and mileage, if any, supported by the affidavit of the judge pro tempore that the judge pro tempore actually served the days, and the miles traveled were necessary; and
- (2) an affidavit of the regular judge stating the reason for the service of the judge pro tempore.

(d) The payment under subsection (c) shall be paid out of the county treasury for the time being, for which the county shall have credit on settlement with the treasurer of state.

(e) In change of venue from one (1) court to another court of the same county, or from one (1) judge to another judge of the same county, the compensation provided for in this section does not apply, unless the other court or judge to which the change is taken is situated in another city in the same county.

(f) A full-time judge of a circuit, superior, or county court may not be paid compensation for serving as a special judge, except reasonable expenses for meals, lodging, travel, and other incidental expenses approved by the state court administrator.

*As added by P.L.1-1998, SEC.31.*

### **IC 34-35-1-5**

#### **Absence or loss of judge; selection of attorney to serve as temporary judge**

Sec. 5. (a) This section applies if a judge is prevented from presiding during any session of court by reason of:

- (1) death, sickness, or other casualty; or
- (2) the judge's failure to attend or appear for any period of three (3) days;

so that the court will lapse.

(b) The sheriff may adjourn the court from day to day.

(c) If the judge fails to appear under subsection (a)(2):

- (1) the clerk, the sheriff, and the auditor; or
- (2) in case of the absence of the clerk, the sheriff, or the auditor, the two (2) who are present, together with the recorder of the county;

may elect any competent and reputable attorney to act as judge.

(d) If the attorney elected under subsection (c) accepts, the attorney shall qualify as other judges, and the attorney's appointment, with the reason for the appointment and the attorney's oath, shall be entered on the order book.

(e) A judge selected under this section (or IC 34-1-13-5 before its repeal) may preside until:

- (1) the return of the regular judge;
- (2) in case of death, until the judge's successor is named; or
- (3) in case of vacancy or if the judge is required to be absent, until a successor is named by the proper authority.

*As added by P.L.1-1998, SEC.31.*